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HOUSE BILL 515

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Thomas E. Swisstack

AN ACT

RELATING TO JUVENILE JUSTICE; PROVIDING CERTAIN REQUIREMENTS
FOR THE SEALING OF RECORDS AND FILES FOR CHILDREN WHO HAVE BEEN
THE SUBJECT OF A DELINQUENCY PETITION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 32A-2-26 NMSA 1978 (being Laws 1993,
Chapter 77, Section 55, as amended) is amended to read:

"32A-2-26. SEALING OF RECORDS.--

A. On motion by or on behalf of a person who has
been the subject of a delinquency petition or on the court's
own motion, the court shall [~~vacate its findings, orders and
judgments on the petition and~~] order the legal and social files
and records of the court, the department, probation services
and any other agency in the case sealed. If requested in the
motion, the court shall also order law enforcement files and

underscored material = new
[bracketed material] = delete

underscored material = new
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1 records sealed. An order sealing records and files shall be
2 entered if the court finds that:

3 (1) the child has reached the age of majority
4 and either two years have elapsed since the final release of
5 the person from legal custody and supervision or two years have
6 elapsed since the entry of any other judgment not involving
7 legal custody or supervision; and

8 (2) the person has not, within the two years
9 immediately prior to filing the motion, been convicted of a
10 felony or of a misdemeanor involving ~~[moral turpitude]~~ driving
11 under the influence of intoxicating liquor or drugs or been
12 found delinquent by a court and no proceeding is pending
13 seeking such a conviction or finding.

14 B. Reasonable notice of the motion shall be given
15 to:

16 (1) the children's court attorney;
17 (2) the authority granting the release;
18 (3) the law enforcement officer, department
19 and central depository having custody of the law enforcement
20 files and records if those records are included in the motion;
21 [~~and~~]

22 (4) the local detention facility;
23 (5) the public defender department; and
24 [~~(4)~~] (6) any other agency having custody of
25 records or files subject to the sealing order.

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1 C. Upon the entry of the sealing order, the
2 proceedings in the case shall be treated as if they never
3 occurred and all personal identifying information in the index
4 or electronic references shall be deleted. The court, law
5 enforcement officers and departments and agencies shall reply,
6 and the person may reply, to an inquiry that no record exists
7 with respect to the person. Copies of the sealing order shall
8 be sent by the petitioner to each agency or official named in
9 the order. Copies of the sealing order shall also be available
10 in the district court clerk's office.

11 D. Inspection of the files and records or the
12 release of information in the records included in the sealing
13 order may thereafter be permitted by the court only:

14 (1) upon motion by the person who is the
15 subject of the records and only to those persons named in the
16 motion; and

17 (2) in its discretion, in an individual case,
18 to any clinic, hospital or agency that has the person under
19 care or treatment or to other persons engaged in fact finding
20 or research.

21 E. Any finding of delinquency or [~~need of services~~
22 ~~or~~] conviction of a crime subsequent to the sealing order may
23 at the court's discretion be used by the court as a basis to
24 set aside the sealing order.

25 F. A person who has been the subject of a petition

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1 filed pursuant to the provisions of the Delinquency Act shall
2 be notified in writing by the [~~juvenile probation and parole~~
3 ~~officer~~] department of the right to have records sealed [~~at the~~
4 ~~expiration of the disposition~~].

5 G. A person who is not the subject of a delinquency
6 petition or a person who is determined by the court not to be a
7 delinquent offender shall have [~~his~~] the person's files and
8 records automatically sealed by the court no later than six
9 months after the person reaches the age of majority.

10 [~~H. If two years have elapsed since a person was~~
11 ~~released from legal custody and supervision and the department~~
12 ~~has not received any new allegations of delinquency regarding~~
13 ~~the person, that person's files and records shall be~~
14 ~~automatically sealed.]"~~

15 Section 2. EFFECTIVE DATE.--The effective date of the
16 provisions of this act is July 1, 2007.